
FINAL RECOMMENDATIONS FOR THE CEMETERY AND FUNERAL BUREAU

Recommendations of the Department of Consumer Affairs and the Joint Sunset Review Committee

ISSUE #1. (CONTINUE TO REGULATE THE CEMETERY AND FUNERAL INDUSTRY?) Should the licensing and regulation of the cemetery and funeral professions be continued?

Recommendation #1: *Continue regulation of the cemetery and funeral professions.*

Comments: The potential for consumer and community harm in the delivery of cemetery and funeral services in a state with nearly 250,000 deaths a year (10 percent of all deaths in the country) is significant. Further, funeral and cemetery services constitute the third most costly purchase typically made by consumers. As recent high-profile cases in Compton, Riverside County, and the Bay Area indicate, abuse and fraud persist. Continued regulation of funeral establishments, cemeteries, crematories, funeral directors, embalmers, apprentice embalmers, cemetery brokers, cemetery salespersons, and cremated remains disposers is clearly necessary. We have recently seen in Georgia the consequences of inadequate regulation of these services.

ISSUE #2. (COORDINATE WITH THE DEPARTMENT OF INSURANCE ON ENFORCEMENT OF PRENEED FUNERAL CONTRACT PROTECTIONS?) Consumers purchase insurance policies in conjunction with preneed contracts. It is unclear whether insurance agents are improperly engaging in unlicensed funeral activities or whether they are subject to and comply with the preneed disclosure and trusting laws.

Recommendation #2: *The Bureau should coordinate with the Department of Insurance on enforcement of preneed funeral contract protections.*

Comments: In the Department's ongoing effort to ensure that the Department has working relationships with other state agencies with responsibility for consumer transactions, the Department invited Insurance Commissioner Low and his staff to a meeting with the Department's Executive Officers and Chiefs in July 2001. A collaborative working relationship between the Department and the Department of Insurance was established as a result of that meeting. The Department has directed the Cemetery and Funeral Bureau to meet and work with the Department of Insurance to coordinate maximum oversight of preneed funeral plans. Preneed funeral arrangements, which cover approximately 20 to 30 percent of all California funerals, can be subject to regulation by both the Bureau and the Department of Insurance, depending on whether the preneed arrangement is a pre-paid contract or an insurance policy.

The Bureau has principal jurisdiction over the sale of preneed contracts, while the Department of Insurance regulates the sale of insurance policies to fund preneed funeral services. The Bureau

regulates the contract and price disclosures by the insurance salesperson as the funeral establishment's agent, but does not have regulatory authority over the insurance policy, or the insurance sale.

Each funeral establishment must be managed by a licensed funeral director who is responsible for ensuring full compliance with state law. Therefore, if a funeral establishment (or its employees or agents) is selling preneed insurance arrangements without an insurance license, both the funeral establishment and the funeral director may be held accountable by the Bureau.

During inspections of funeral establishments, the Bureau verifies whether the funeral establishment's employees or agents hold insurance licenses and confirms with the Department of Insurance that these licenses are in good standing.

The Department concurs with the Joint Committee's preliminary recommendation that the Bureau should actively seek to work cooperatively with the Department of Insurance to coordinate enforcement efforts against insurance fraud in preneed funeral insurance.

ISSUE #3. (SUBMIT A DECLARATION OF NON-REPORTING STATUS?) Should funeral establishments be required to submit a declaration of non-reporting status to the Bureau?

Recommendation #3: Require funeral establishments to submit a declaration of non-reporting status to the Bureau on an annual basis.

Comments: As a part of its oversight of preneed trust funds, the Bureau asks funeral establishments that do not report preneed trust funds to the Bureau to submit a *Declaration of Non-Reporting Status* which specifies what kinds of preneed arrangements its consumers may use. Types of non-reportable preneed arrangements include direct deposit into a savings account without the involvement of the funeral establishment and direct payment of preneed insurance premiums to an insurance company. In identifying insurance-based preneeds, the form asks for a list identifying all insurance companies with which its customers have preneed contracts. This form can be useful in monitoring insurance-based preneeds. However, the form is not required and is completed by funeral establishments only on a voluntary basis. To increase the Bureau's ability to maintain oversight of preneed funds, the Bureau should be given statutory authority to require funeral establishments who do not currently file a preneed trust fund report be required to file a *Declaration of Non-Reporting Status* with the Bureau on an annual basis.

ISSUE #4. (CLOSELY MONITOR APPRENTICE PROGRAM?) It is unclear whether the entry-level requirements for embalmers are adequate, inadequate or duplicative.

Recommendation #4: Compliance with the embalmer apprentice requirements should be closely monitored.

Comments: The Bureau's enforcement staff recently identified cases of fraud among applicants for embalmer licenses during required apprenticeships. Apprentice embalmers are required to file reports with the Bureau, stating that they have complied with the requirements of the apprenticeship, including the requirement that they have assisted in embalming not less than 100 human remains (Business and

Professions Code Section 7643). Through the Bureau's enforcement activities, the Bureau has received anonymous tips that apprentice embalmers have not complied with the apprenticeship requirements. Specifically, the Bureau has taken disciplinary action against apprentices who have fraudulently reported their completion of the requirement that apprentices must have assisted in embalming not fewer than 100 remains. Successful completion of the apprenticeship is an important component in the embalmer training and enforcement of this requirement is critical. The Department concurs with the Joint Committee's preliminary recommendation that the Bureau be vigorous in confirming licensure requirements have been met.

ISSUE #5. (AUTHORITY TO LICENSE AND REGULATE MANAGERS?) Although the Bureau administers an examination for crematory managers and cemetery managers the Bureau cannot license or regulate these individuals.

Recommendation #5: *Cemetery managers and crematory managers should be subject to licensure and regulation by the Bureau.*

Comments: While cemetery managers and crematory managers are required to pass an examination administered by the Bureau, these professionals are not licensed or regulated by the Bureau thereafter. Under current law, only the cemetery or crematory owners are held accountable for the operation of the cemetery or crematory. Licensing crematory and cemetery managers would provide another level of consumer protection by assigning accountability and state oversight to these professions and ensuring the Bureau's ability to enforce the law. Licensure would also provide an avenue for criminal background checks, ensuring that consumers are not at risk for criminal activity from licensees.

The Department concurs with the Joint Committee's preliminary recommendation that cemetery managers and crematory managers should be licensed by the Bureau. Additionally, this provision is included in SB 17 (Figueroa), the Department-sponsored enhanced crematory regulation bill, which is currently pending in the Assembly.

ISSUE #6. (OCCUPATIONAL ANALYSES NEEDED?) It is unclear whether the Bureau is complying with the recommended five to seven year timeframe for performing an occupational analysis and examination validation for their cemetery examinations.

Recommendation #6: *Occupational analyses should be performed of the cemetery licensing examinations.*

Comments: Although the Bureau has contracted with the Department's Office of Examination Resources (OER) to conduct occupational analyses of the funeral examinations, the Bureau has not taken similar action for the cemetery examinations. The cemetery broker examination, cemetery manager examination and crematory examination have not been reviewed by OER within the past five to seven years, largely due to the cost associated with the occupational analyses. Because the Bureau does not have the authority to charge a fee for cemetery and crematory manager examinations, examination fees are not available to subsidize the costs of the occupational analyses.

However, the Bureau projects that revenues will be available for this should the \$8.50 fee be continued. The Department concurs with the Joint Committee's preliminary recommendation that the Bureau should take immediate steps to begin occupational analyses of the cemetery licensees.

ISSUE #7. (AUTHORIZE ASSESSMENT OF LATE FEES?) The Bureau has the authority to assess a late fee on every licensee except cemeteries and crematories.

Recommendation #7: *Provide the Bureau the authority to assess a late fee on cemeteries and crematories.*

Comments: Currently, Section 9747 of the Business and Professions Code provides that licenses under the Cemetery Act are subject to the renewal fee plus a delinquent fee of 50%. However, the law places a cap of \$25 on the delinquent fee. This fee cap is inconsistent with the licenses under the Funeral Act and with other regulatory programs under the Department that have authority to charge 150% of the renewal fee. The Department concurs with the Joint Committee's preliminary recommendation that the Bureau should be given the authority to assess a late fee on cemeteries and crematories, as is the practice for their funeral licensees.

ISSUE #8. (AUTHORIZE ANNUAL INSPECTIONS OF CEMETERIES?) It is unclear whether the Bureau has explicit authority to conduct regular inspections of licensed cemeteries.

Recommendation #8: *The Bureau should be given the authority to annually inspect cemeteries.*

Comments: Recent discoveries by Bureau field representatives of serious violations in licensed cemeteries emphasize the necessity to inspect cemeteries on an ongoing basis. Currently, there is no mandate for the Bureau to inspect the approximately 200 private cemeteries under the Bureau's jurisdiction. Equally important, the Bureau does not have the authority to conduct elective inspections on an annual basis.

The Department concurs with the Joint Committee's preliminary recommendation that the Bureau be given clear authority to inspect cemeteries, and be required to conduct annual unannounced inspections of each licensed cemetery. Additionally, this provision is included in SB 17 (Figueroa), the Department-sponsored enhanced crematory regulation bill that is currently pending in the Assembly. This authority would ensure consistent oversight of all funeral and cemetery operations, as the Bureau is already required to conduct annual inspections of funeral establishments and crematories. Identifying problems before major disruptions or crimes materialize provides community protection and incentives for businesses to conduct operations consistent with the law.

ISSUE #9. (REGULAR REVIEW OF ENDOWMENT CARE FUNDS?) The Bureau is required to examine endowment care funds and endowment care reports. It is unclear whether the Bureau complies with this requirement.

Recommendation #9: *The Bureau should regularly review cemetery endowment care funds.*

Comments: The Bureau has conducted annual examinations of endowment care funds and special care fund reports each year since the Department assumed the regulatory responsibilities of the Boards in 1996. Desk audits of annual cemetery trust reports and licensing applications have resulted in over \$1.9 million being repaid to trust funds.

In addition, field audits of cemetery trust funds have identified more than \$4.2 million in trust fund violations. The Bureau has participated in financial investigations resulting in six criminal convictions for trust fund violations, and the California Board of Accountancy has taken disciplinary action against a certified public accountant for violations discovered by Bureau auditors.

The Bureau has not been able to fully comply with the requirement to examine each endowment care trust fund once every five years. Initial estimates of the workload associated with endowment care fund reviews were seriously flawed when the Bureau was established. The assumption was made that a trust fund audit, review, and sampling of records and receipts could be completed in a single day. In fact, this may take seven to eight weeks. The Department found that corporate structures in the cemetery industry increased the complexity of performing audits and thereby greatly extended the review process. Cemetery owners often have subsidiary or parent corporate entities, and tracing the path of funds is often complicated. As a result, a single cemetery's trust fund audit may require investigative audits of several related corporate entities. The preparation of audit findings and the ongoing dialogue with the licensee regarding discrepancies, documentation, and business practices was also more complex than anticipated. It is not uncommon for audits to take seven to eight weeks.

In addition, recruitment and retention of audit staff has proved problematic, further hampering the Bureau's ability to complete regular audits. As is the case with certain state positions, competition with the private sector is difficult to overcome.

The Bureau has indicated a need for additional auditor positions in order to carry out the mandate to examine each endowment care fund once every five years. To the extent a need for additional resources to implement these activities is identified, we will address the need through the annual budget development process.

ISSUE #10. (REQUIRE FINGERPRINTS OF ALL APPLICANTS?) Only applicants for the funeral director and embalmer examinations are required to submit fingerprint cards for background investigations. It is unclear why the Bureau doesn't interpret the law to require all Bureau applicants to submit fingerprint cards for background investigations.

Recommendation #10: *The Bureau should enforce the fingerprinting requirement for all applicants.*

Comments: Since 1998, Business and Professions Code Section 144 requires specified boards and bureaus within the Department, including the Cemetery and Funeral Bureau, to require submission of fingerprints for licensing applicants. The Bureau currently obtains fingerprints for all funeral operation license and registration categories. These include funeral directors, embalmers, apprentice embalmers, and funeral establishment owners.

As the JLSRC notes, the Bureau has not been able to fully implement this provision for cemetery licensees due to staffing and funding limitations. Nonetheless, the Bureau is currently finalizing

forms, modifying its website information, and establishing the procedures to begin receiving fingerprints through the electronic digital imaging process of Live Scan in March 2002.

The Department concurs with the Joint Committee's preliminary recommendation that the Bureau collect fingerprints as a condition of licensure.

ISSUE #11. (CONTINUE \$8.50 FEE?) The main source of revenue (an \$8.50 cremation and interment fee) for the Bureau's Cemetery Fund will be eliminated as of April 1, 2003.

Recommendation #11: *The \$8.50 cremation and interment fee, which constitutes 75% of the Cemetery Program's funding, should be continued.*

Comments: In 1996, the fee paid to the Bureau for each burial and cremation was raised from \$0.50 per interment and \$1.00 per cremation to \$8.50 each. These fees, which are paid by cemeteries and crematories, constitute 75 percent of the Cemetery Program's funding. The fees initially were increased, subject to sunset in April 2003. It is clear that these fees need to be continued at their current level in order to ensure support for cemetery and crematory regulation.

The approximately \$1.5 million generated annually by these fees has provided funding for continued cemetery operations and repayment of the Cemetery Task Force loans. Under current law, the authority for these fees sunsets when the loans are repaid or no later than April 1, 2003. Current law provides that the \$8.50 fee does not revert to \$0.50 and \$1, respectively, but is completely eliminated.

Without a reauthorization of the \$8.50 fee, the Bureau will have to cease cemetery operations half way into fiscal year 2003/04. In FY 2004/05, the Bureau will not be able to conduct any cemetery regulation at all. These shortfalls would require the Bureau to drastically cut all regulatory operations and eliminate many key functions, including enforcement, inspections, and licensing activities. Such program reductions would create tremendous consumer complaint backlogs, and eliminate essential consumer protection operations.

The continuation of the \$8.50 fee would allow the Bureau to address its enforcement challenges and proactively inspect crematories and cemeteries, respond to consumer complaints, examine trust funds and trust fund reports, take administrative action against violations, administer examinations, issue licenses, and conduct outreach to consumers and licensees.

Continuation of the \$8.50 fee would fund the additional costs of annual cemetery inspections and regular endowment care fund audits as recommended above.

The Department concurs with the Joint Committee's preliminary recommendation that the \$8.50 fee should continue. The sunset on the fee should be extended so that the Bureau can meet its consumer protection mandates.

ISSUE #12. (EXAMINE NEED FOR REGULATION OF PROPRIETARY EMPLOYEES?) The law exempts an individual functioning as a cemetery broker, cemetery manager or cemetery salesperson from licensure and regulation by the Bureau when he/she is an employee (direct or proprietary) of a religious corporation, church, religious society or denomination.

Recommendation #12: *The Bureau should examine the need for regulation of proprietary employees of religious corporations, churches, religious societies or denominations.*

Comments: Although religious corporations, churches, religious societies, denominations or corporations are specifically excluded from the Cemetery Act, the Department recommends that the Bureau examine the need for regulation of proprietary employees of these entities. Currently, the Bureau does not have oversight over cemetery brokers, cemetery managers, cemetery salespersons, cremated remains disposers, crematories and crematory managers who work for these entities. To ensure that this exemption is still appropriate given changes in the marketplace, the Department recommends the Bureau conduct an assessment of the need for regulation and report back to the Joint Committee and the Department in two years.

ISSUE #13: (REQUIRE CONSUMER GUIDE TO BE PROVIDED TO CEMETERY AND CREMATORY CONSUMERS?) Currently, funeral establishments are required to provide the consumer guide to consumers in certain specified situations; however, cemetery purchases are not subject to the same requirement.

Recommendation #13: *The Bureau's consumer guide should be provided to consumers prior to contracting for cemetery services.*

Comments: Effective January 1, 2002, the Business and Professions Code requires, prior to the drafting of a contract for funeral services, that the funeral establishment will provide the consumer with a copy of the Bureau's consumer guide for cemetery and funeral purchases. The Department concurs with the Joint Committee's preliminary recommendation that this provision should be included in the Cemetery Act as well, and required when consumers are making cemetery purchases.

ISSUE #14. (STUDY NEED FOR REGULATION OF THIRD PARTY CASKET RETAILERS?) Retail casket stores, and occasionally others, currently sell merchandise that, if sold by a licensed funeral director, would be subject to preneed sales requirements relating to certain contract, fiduciary and reporting practices.

Recommendation #14: *The Bureau should complete a study to determine the need for regulation of third-party casket sellers.*

Comments: Third-party sales of caskets and other funeral merchandise has been an emerging industry since the Federal Trade Commission (FTC) revised its Funeral Rule, effective July 1994. The Funeral Rule, which establishes federal standards for funeral industry practices, requires funeral establishments to give consumers accurate, itemized price information and disclosures. In addition, funeral establishments are prohibited from: (1) requiring customers to buy certain funeral goods or services as a condition for furnishing other funeral goods or services, and (2) charging consumers a handling fee for caskets purchased from another source.

In recent years, the role and function of the funeral establishment in California has changed significantly. Formerly, funeral goods and services were provided, almost exclusively, through the funeral establishment. Currently, funeral goods and some services may come from a variety of

providers, such as cemeteries, casket stores, or crematories in addition to the funeral establishment; and the funeral establishment may at times function as the coordinator of those providers.

In 1998, the Legislature enacted AB 1709 (Alquist, Chapter 286, Statutes of 1998), which placed contract and disclosure requirements upon third-party sellers in the general advertising provisions of the Business and Professions Code (BPC § 17530.7). However, the Legislature has not placed any trusting requirements on third-party sellers who take money for funeral goods in advance of need.

Issues regarding whether money taken in advance of need (preneed) should be protected by a trusting requirement are significant. Questions regarding the need for regulation of third-party sellers also continue to emerge. Although the Bureau has begun collecting information regarding the availability of third-party sellers and the potential need for regulation, significantly more information is needed before the Department is able to make a recommendation on the need for regulation of these professionals. To address these questions, the Department has directed the Bureau to perform a market assessment to determine the number of these providers, research the number of consumer complaints filed with the Bureau and other government entities, and report back to the Joint Committee and the Department in two years with recommendations about the need for additional regulation of these retailers.

ISSUE #15: (IMPLEMENT INTERNAL AUDIT RECOMMENDATIONS?) Should the Bureau be required to implement the recommendations of the Department's internal audit?

Recommendation #15: *The Bureau should implement the recommendation of the Department's internal audit.*

Comments: In 2001, the Department directed its internal audit division to conduct a performance audit of the Bureau. The audit concluded that, in most aspects, the Bureau is fulfilling its respective licensing and enforcement statutory responsibilities and operations. However, the audit did identify a number of operational improvements that would benefit the Bureau, if implemented. These include improvements to the licensing process, the Bureau's strategic planning process, oversight of the cemetery and funeral trust funds and handling of consumer complaints. In response to the audit, the Bureau submitted a response in which it concurred with the audit findings and proposed corrective actions to implement the audit recommendations. The Department has directed the Bureau to begin implementing these corrective actions immediately and to submit quarterly progress reports to the Department.

Additional Joint Committee Recommendations

ISSUE #16. (AUTHORIZE RECOVERY OF EXAM ADMINISTRATION COSTS AND LICENSING FEES?) Although the Bureau administers an examination for crematory managers and cemetery managers the Bureau cannot charge a fee for the development and administration of the examination.

Recommendation #16: *The Bureau should have the authority to recover costs for administering the cemetery manager and crematory manager examinations and assess a reasonable licensing and application fee.*

Comments: Each of the State's 77 licensed crematories must be operated under the supervision of a crematory manager who has passed the Bureau's crematory manager examination. Additionally, each of the State's approximately 200 cemeteries must be operated by a cemetery manager who has passed the Bureau's cemetery manager examination.

Nonetheless, existing law does not provide the authority to charge a fee for the cemetery manager or crematory manager examinations. In order to administer and develop these examinations, the Bureau has been forced to redirect revenues from other Cemetery Fund resources.

The ongoing cost to develop and administer the crematory manager and cemetery manager examinations is approximately \$430 and \$800 per candidate, respectively. With an average of 76 crematory manager candidates and 41 cemetery manager candidates each year, the Bureau has had to subsidize over \$24,000 in exam costs annually, or \$144,000 since the Department took over the program. These costs per candidate do not include the additional \$110,000 cost of occupational analyses for both professions.

ISSUE #17: (IS \$50,000 FIDELITY BOND ENOUGH?) Applicants for a Certificate of Authority for the operation of a cemetery must post a \$50,000 fidelity bond with the Bureau. It is unclear whether \$50,000 is sufficient to cover losses.

Recommendation #17: The Bureau should conduct a study to assess whether the \$50,000 bond is a sufficient amount to cover losses to the endowment care trust fund.

Comments: The purpose of the bond is to guarantee payment of any monetary loss incurred by the endowment care or special care funds of the cemetery authority, occasioned by any acts of fraud or dishonesty by the board of trustees or corporate trustee thereof. An endowment care fund includes money collected from cemetery property purchasers and placed in trust for the maintenance and upkeep of the cemetery. Most endowment care trust funds are significantly more than \$50,000.

The Bureau should report back to the Joint Committee in two months with recommendations about the need to increase the \$50,000 fidelity bond.

ISSUE #18. (RAISE FINE CAP?) Does the Bureau feel that the existing fine structure acts as a sufficient deterrent?

Recommendation #18: The Bureau should examine the need to increase or modify the fine cap.

Comments: The Bureau's fine structure is subject to the limitations of BPC § 125.9 which limits fines to \$2,500 for each inspection or each investigation made with respect to the violation. On several occasions, citation and fines have been issued which, because of the number of violations, total to more than \$2,500. In those cases the actual fine assessed is reduced to \$2,500 because of the limitation of Section 125.9.

The Bureau should report back to the Joint Committee within two months with recommendations about the need to increase or modify the fine cap.